

STATE OF CALIFORNIA  
DEPARTMENT OF INSURANCE  
300 CAPITOL MALL, 17<sup>TH</sup> FLOOR  
SACRAMENTO, CALIFORNIA 95814

**NOTICE OF PROPOSED ACTION AND  
NOTICE OF PUBLIC HEARING**

**RH – 01-016450  
JANUARY 25, 2002**

**PROCEDURES GOVERNING PERSONS SUBJECT TO  
TITLE 18 UNITED STATES CODE SECTIONS 1033 and 1034**

SUBJECT OF HEARING

Insurance Commissioner Harry W. Low is considering amending Title 10, Chapter 5, Subchapter 1, Article 4.5, of the California Code of Regulations to include sections 2175 through 2177, inclusive regarding Procedures Governing Persons Subject to Title 18 United States Code sections 1033 and 1034. Commissioner Low will conduct a rulemaking hearing to gather and make available to the public, information and public comment concerning these proposed procedures

AUTHORITY AND REFERENCE

The Insurance Commissioner proposes to adopt these regulations pursuant to the authority of sections 3 and 5 of Senate Bill 941, Chapter 782, Statutes of 1999 [California Insurance Code section 1742.2]. The purpose of the regulations is to implement, interpret, and make specific provisions of Title 18 United States Code sections 1033 and 1034 and California Insurance Code section 1742.2.

HEARING DATE AND LOCATION

Notice is hereby given that a public hearing will be held to permit all interested persons the opportunity to present statements or arguments, orally or in writing, with respect to the provisions of this statute and these regulations, at the following dates, times and locations:

**Date:** Tuesday, March 26, 2002  
**Time:** 10:00 am  
**Location:** State Building – San Francisco  
455 Golden Gate Avenue, Hearing Room 9  
San Francisco, CA 94102

**Date:** Thursday, March 28, 2002  
**Time:** 10:00 am  
**Location:** California Department of Insurance  
Ground Floor Hearing Room  
Ronald Reagan State Office Building  
300 South Spring Street  
Los Angeles, CA 90013

The hearing will continue on the dates noted until all testimony has been completed or 4:00pm, whichever is earlier.

#### ACCESS TO HEARING ROOMS

The facilities to be used for the public hearing are accessible to persons with mobility impairments. Persons with sight or hearing impairments are requested to notify the contact person (listed below) in order to make special arrangements, if necessary.

#### WRITTEN AND/OR ORAL COMMENTS

All persons are invited to submit written comments to the Insurance Commissioner on the proposed regulations. General or substantive inquiries may be addressed to:

Natasha R. Ray, Senior Staff Counsel  
300 Capitol Mall, 17<sup>th</sup> Floor  
Sacramento, CA 95814  
(916) 492-3559

or

James Harrington, Chief  
Criminal Investigations  
300 So. Spring Street, 10<sup>th</sup> floor  
Los Angeles, CA 90013  
(213) 346-6033

**All written materials, unless submitted at the hearings, must be received by the Insurance Commissioner, at the address listed above, no later than 4:30pm on Thursday, March 28, 2002. Unless leave is given at the hearing, any written materials received after that time will not be considered.**

All persons are invited to present oral and/or written testimony at the scheduled public hearing.

Comments may be sent via electronic mail to Natasha R. Ray, Senior Staff Counsel at [rayn@insurance.ca.gov](mailto:rayn@insurance.ca.gov).

#### ADVOCACY OR WITNESS FEES

Eligible persons or groups representing the interests of consumers may be entitled to reasonable advocacy fees, witness fees and other reasonable expenses, in accordance with the provisions of Title 10 of the California Code of Regulations sections 2661.1 *et seq.*, in connection with their participation in this matter. Interested persons should contact the Office of the Public Advisor at the following address in order to inquire about the appropriate procedures:

Office of the Public Advisor  
California Department of Insurance  
300 Capitol Mall, 17<sup>th</sup> floor  
Sacramento, California 95814  
(916) 492-3559

### INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The Commissioner proposes the adoption of Title 10, Chapter 5, Subchapter 1, Article 4.5, sections 2175 through 2177. The purpose of these regulations is to implement, interpret and make specific provisions of the California Insurance Code (CIC), including but not limited to, CIC section 1742.2. These regulations will establish definitions for critical terms and will set forth procedures governing persons who are subject to Title 18 United States Code sections 1033 and 1034.

### SUMMARY OF EXISTING LAW

Existing law requires persons transacting or engaging in the business of insurance to maintain a valid license issued by the Department to transact or engage in the business of insurance.

Existing law requires that upon filing an application for a license, the Commissioner may make such investigation and require the filing of such supplementary documents, affidavits and statements as maybe necessary to obtain a full disclosure of such information as will aid him in determining whether the prerequisites for the license have been met. (CIC section 1666.)

Existing law provides that the Commissioner may deny an application for any license if, *inter alia*, the applicant has been convicted of a felony; misdemeanor; a public offense consisting of a fraudulent act or an act of dishonesty in acceptance, custody or payment of money or property. (CIC section 1668)

Existing law provides that, with certain exceptions, a license shall not be denied without an opportunity to the applicant to be heard in support of his application.

Existing law provides that the Commissioner may, without hearing, deny an application if the applicant has committed a felony and/or committed certain misdemeanors. (CIC section 1669.)

The Commissioner now proposes the adoption of these regulations as follows:

### STATEMENT OF SPECIFIC PURPOSE

The effect of the specific proposed regulations is as follows:

#### **Adopted section 2175.1**

The effect of the proposed adoption of this regulation would be to define the purpose of the regulation as the implementation of the provisions of Title 18 United States Code sections 1033 and 1034 and CIC section 1742.2.

**Adopted section 2175.2**

This proposed section defines the terms used in the regulation.

**Adopted section 2175.3**

This proposed section specifies who must comply with the regulation.

**Adopted section 2175.4**

This proposed section specifies that the procedures governing prohibited persons applies to persons who are currently licensed and who are subject to these provisions.

**Adopted section 2175.5**

This proposed section specifies and describes the responsibility of insurers and other employers to identify persons who are subject to these provisions.

**Adopted section 2175.6**

This proposed section specifies the requirement that persons subject to these provisions must file an Application for Written Consent with the Department and describes the information that must be contained in the application.

**Adopted section 2175.7**

This proposed section specifies that the Commissioner shall have the sole discretion to grant or deny any Application for Written Consent as well as specifying the factors to be considered in granting or denying an application.

**Adopted section 2175.8**

This proposed section specifies that the prior, Written Consent of the Commissioner is a prerequisite for licensing to engage in or to transact the business of insurance.

**Adopted section 2175.9**

This proposed section specifies that the Department has developed a form of Application for Written Consent.

**Adopted section 2175.10**

This proposed section specifies the requirements for Character References that would be submitted along with the Application for Written Consent.

**Adopted section 2176.1**

This proposed section describes the effect of providing false or misleading statements on an Application for Written Consent.

**Adopted section 2176.2**

This proposed section specifies that any written consent issued by the Commissioner shall be solely for the use of the person making the Application for Written Consent.

**Adopted section 2176.3**

This proposed section specifies that the Commissioner has the discretion to grant a temporary Written Consent and specifies that a temporary Written Consent is valid until a time certain and expires thereafter and that a new, temporary Written Consent must be obtained upon the expiration of the temporary Written Consent.

**Adopted section 2176.4**

This proposed section describes the effect of subsequent convictions of persons previously granted Written Consent.

**Adopted section 2177.1**

This proposed section specifies the time limit in which a hearing may be requested upon denial of an Application for Written Consent.

**Adopted section 2177.2**

This proposed section describes the form of request for a hearing and the information required in a Request for Hearing.

**Adopted section 2177.3**

This proposed section describes the filing and service requirements for a Request for Hearing.

**Adopted section 2177.4**

This proposed section describes the process whereby a time for hearing will be set.

**Adopted section 2177.5**

This proposed section describes the circumstances under which a continuance may be granted as well as the procedure for requesting a continuance.

**Adopted section 2177.6**

This proposed section describes the role of the Department of Insurance in the hearing.

**Adopted section 2177.7**

This proposed section specifies that an applicant may be, but need not be, represented at the hearing.

**Adopted section 2177.8**

This proposed section describes the authority of the Administrative Law Judge.

**Adopted section 2177.9**

This proposed section specifies that the burden of proof at a hearing is on the applicant.

**Adopted section 2177.10**

This proposed section describes the rules of evidence which are applicable to a hearing.

**Adopted section 2177.11**

This proposed section specifies that the Administrative Law Judge may require the production of further evidence or briefing on any issue and that no additional evidence will be taken without an order of the Administrative Law Judge.

**Adopted section 2177.12**

This proposed section describes the circumstances under which Official Notice of any fact may be taken.

**Adopted section 2177.13**

This proposed section specifies that the proceedings at a hearing will be recorded by a hearing reporter and that parties are responsible for making their own arrangements with the reporter to obtain a transcript of the proceedings.

**Adopted section 2177.14**

This proposed section specifies that all parties shall bear their own costs of the hearing.

**MANDATES ON LOCAL AGENCIES OR SCHOOL DISTRICTS**

The proposed regulations do not impose any mandate on local agencies or school districts. There are no costs to local agencies or school districts. There are no costs to local agencies or school districts for which Part 7 (commencing with section 17500) of Division 4 of the Government Code would require reimbursement.

**COST OR SAVINGS TO STATE AND LOCAL GOVERNMENT / FEDERAL FUNDING**

The Commissioner has determined that there will be no direct cost or savings to, nor will there be any new program mandates on, any local agency, state agency or school district from the proposal, and that the proposal will not affect federal funding to the State. The proposed regulations will not affect small businesses because insurance companies are by definition not small businesses.

**ALTERNATIVES**

The Commissioner has determined that no reasonable alternative considered by him, or that has otherwise been identified and brought to his attention, would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons than the proposed action. The Commissioner invites public comment on alternatives to the regulations.

**IMPACT ON HOUSING COSTS**

The matters proposed herein will not effect housing costs.

### ECONOMIC IMPACT ON BUSINESS AND INDIVIDUALS AND THE ABILITY OF CALIFORNIA BUSINESSES TO COMPETE

The Commissioner has made an initial determination that the proposal will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. To the extent the proposed regulations will have an impact on the cost of private persons or businesses directly affected, the cost impact is as a result of the Insurance Code sections being implemented, interpreted or made specific by the proposed regulations. The Commissioner invites interested parties to comment on this issue.

### EFFECT ON JOBS AND BUSINESSES IN CALIFORNIA

The Commissioner believes that the proposed regulations will have no impact on the creation or elimination of jobs in the State of California, the creation of new businesses, the elimination of new businesses, and/or the expansion of businesses currently operating in California. To the extent the proposed regulations will have an effect on the creation, elimination, and expansion of businesses and jobs, the impact is as a result of the Insurance Code sections being implemented, interpreted or made specific by the proposed regulations. The Commissioner invites interested parties to comment on this issue.

### POTENTIAL COST IMPACT ON PRIVATE PERSONS OR ENTITIES/BUSINESSES

The Commissioner believes that the proposed regulations will not have a significant cost impact on private persons or businesses directly affected by them. To the extent that the proposed regulations do have an impact on the cost of private persons or businesses directly affected, the cost impact is a result of the Insurance Code sections being implemented, interpreted or made specific by the proposed regulations. The Commissioner invites all interested parties to comment on this issue.

### IMPACT ON SMALL BUSINESSES

There is no adverse impact on small businesses. This regulation impacts insurance companies, which are not small businesses.

### NON-DISCRETIONARY COSTS OR SAVINGS

The proposal will not impose any non-discretionary cost or savings on local agencies.

### COSTS OR SAVINGS TO STATE AGENCIES

The proposal will not result in any cost or significant savings to state agencies.

### REIMBURSABLE COSTS

There are no costs to local agencies or school districts for which Part 7 (commenting with section 17500) of Division 4 of the Government Code would require reimbursement.

### IMPACT ON COMPETITIVENESS

The proposal will not have an adverse impact on competition or competitiveness.

PLAIN ENGLISH

The proposal is in plain English except to the extent that technical terms could not be avoided. Those technical terms are defined in plain English.

COMPARABLE FEDERAL LAW

There are no existing federal regulations or statutes comparable to the proposed regulations.

IMPACT ON HOUSING COSTS

The proposal will not affect housing costs.

TEXT OF REGULATIONS AND INITIAL STATEMENT OF REASONS

The Department has prepared an "Initial Statement of Reasons" which sets forth the reasons for these regulations. The Initial Statement of Reasons, together with the text of the proposed regulations, and this Notice of Proposed Action are available for inspection or will be provided at no charge upon request to the contact person listed above.

ACCESS TO COPIES OF PROPOSED REGULATIONS AND STATEMENTS OF REASONS

Any interested person may inspect a copy or direct questions about the proposed regulations, the statement of reasons therefor, the information upon which the proposal is based, and any supplemental information, contained in the rulemaking file, from the contact person listed above. Upon prior request, the rulemaking file is available for inspection at 300 Capitol Mall, 17<sup>th</sup> floor, Sacramento, CA 95814 between the hours of 9:00 am and 4:30 pm, Monday through Friday. This notice, the proposed regulations and statement of reasons is available on the Department's website at [www.insurance.ca.gov](http://www.insurance.ca.gov). The Final Statement of Reasons, once it has been prepared, may be obtained from Natasha R. Ray, Senior Staff Counsel. Ms. Ray's contact information is listed above.

AUTOMATIC MAILING

A copy of this notice, including the informative digest, which contains the general substance of the proposed regulations, automatically will be sent to all persons on the Insurance Commissioner's mailing list.

MODIFIED LANGUAGE

If the regulation adopted by the Department differs from, but is sufficiently related to, the action proposed, it will be available to the public for at least 15 days prior to the date of adoption.

Dated: January 25, 2001

HARRY W. LOW, Insurance Commissioner

By: \_\_\_\_\_  
Natasha R. Ray  
Senior Staff Counsel